

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS

DAVID A. STEBBINS

VS.

CASE NO. 3:17-cv-03092

STATE OF ARKANSAS, ARKANSAS
REHABILITATION SERVICES, AND AMY JONES

DEFENDANTS

**SEPARATE MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO FIRST
AMENDMENT RETALIATION CLAIM**

Comes now, *pro se* Plaintiff David A. Stebbins, who hereby submits the following
Separate Motion for Partial Summary Judgment.

1. I previously sought judgment against Amy Jones for the tort of First Amendment Retaliation, arguing that her choice to factor my litigation history into her adverse action, even if the litigation history is not protected by Sec. 503 of the Americans with Disabilities Act, is still an act of First Amendment Retaliation. In this motion, I ask the Court to declare summary judgment against Amy Jones for the tort of First Amendment Retaliation on a different theory of liability than what I had previously argued.
2. The Defendants maintain that their adverse action was motivated, at least in part, by some allegedly threatening behavior I engaged in over the phone with various ARS officials. The truthfulness of these accusations is greatly disputed. However, today's motion will assume, without conceding, that these accusations can be sufficiently proven. Even if they can be proven, it actually incriminates the Defendants further!
3. The specific actions the Defendants allege in their client contact notes do not give rise to a claim of "true threat" as a matter of law. Therefore, my statements are still protected by the First Amendment.
4. This means that, even if these actions can be proven to have occurred, for Amy Jones to

US DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

JAN 18 2018

By DOUGLAS F. YOUNG, Clerk
Deputy Clerk
PLAINTIFF

have used them as a factor in her adverse actions is an inherent act of First Amendment retaliation in and of itself!

5. Therefore, I am entitled to judgment as a matter of law against Amy Jones for the tort of First Amendment Retaliation, independent of the previous theory of liability.

6. With that out of the way, I would like the Court to incorporate that summary judgment into its ruling on the ADA claims. After all, if we remove the consideration of my allegedly hostile behavior, all that is left for the Defendants to consider is my disabilities and statutorily protected activities. In other words, the Defendants had absolutely zero valid considerations that contributed to their adverse action! They literally have no leg to stand on whatsoever! No pretext needed; they simply have no claim to any legitimate decisionmaking.

7. I therefore ask this Court to issue an injunction to Amy Jones to approve my application for ARS funding. If the other Motions for Summary Judgment are denied, we can then proceed to trial to adjudicate only the ADA and Rehabilitation Act claims.

8. Please find, attached to this motion, the following exhibits:

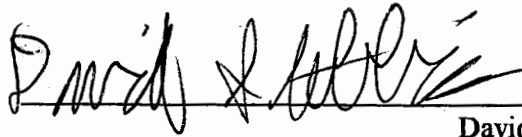
- **Exhibit 1:** Client Contact Note by Lorraine Miller.
- **Exhibit 2:** Client Contact Note by an anonymous author.
- **Exhibit 3:** Client Contact Note by Catherina Matheny.
- **Exhibit 4:** Client Contact Note by Alana Walls
- **Exhibit 5:** Client Contact Note by Amy Jones
- **Exhibit 6:** First of two police reports purportedly dated December 9, 2015.
- **Exhibit 7:** Second of two police reports purportedly dated December 9, 2015.

9. Please also find, attached to this motion, a Brief in Support thereof, as well as a Statement of Undisputed Material Facts in Support thereof. The contents of both documents are

hereby incorporated by reference.

Wherefore, premises considered, I respectfully request that this Court enter summary judgment against Amy Jones for the tort of First Amendment Retaliation, issue an appropriate injunction, award costs incurred, and any other relief to which I may be entitled.

So requested on this, the 15th day of January, 2018.

A handwritten signature in black ink, appearing to read "David Stebbins", is written over a horizontal line.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

Contact Note: 12/04/2015 01:53:32 PM - Client Contact (David Stebbins, XXX-XX-414,.... Page 1 of 2

Client Contact Note

Client Name: David Stebbins
Date: 12/04/2015
Description: Client Contact

Whose Note: LORRAINE MILLER CRC

For Program: VR
Status: 02

Type of Contact: Phone

Flag this Contact Note?

Note:

I was asked to speak with David on this date. He was quite agitated, and (I assume) wanted to speak with a supervisor about his counselor. Our District Manager was not available and I was asked to talk to him. I was told by the person answering his call that he had been "yelling" at her. When I picked up the phone and asked him his name, and how to spell it, etc., he asked if he could give me his number so I could call him back, which I promptly did. He sounded very, very anxious, was breathing hard, talking very fast, etc. At one point, I counseled with him on trying to calm himself down. He was upset because he had requested an exception to the service provision policy so he could get his school expenses paid. He wants to go to Arkansas Tech in Russellville, and will need to live in the dorm, and go to summer school since he would have to give up his apartment in Harrison. I asked what he wants to study, and he said computers. I inquired about his taking some online classes, but he did not think there were many he could take. He asked if I thought his request for ARS spending more than the allowed amount would be approved, and I told him I had no idea about that. I told him I seldom ask for an exception, and the requests aren't always approved. He wanted a different counselor, and said he wanted one that would be in Harrison more. I told him there was only one other counselor and I was not certain how many days she was in the Harrison office, as a large territory was served out of that office. He was most upset because he said his counselor had told him he would let him know on Thursday about his request for services exceeding the

ARS 62

<https://arrsa.libera.com/Sys7AR/fformdisplay.aspx?JsBgcYI7PekiBOH:cpBpi/ZIsc7J7K...> 10/28/2016

Exh. 1

Contact Note: 12/04/2015 01:53:32 PM - Client Contact (David Stebbins, XXX-XX-414.... Page 2 of 2

allowed amount. He said it was unprofessional that his counselor had not let him know since he had said he would tell him on Thursday. I explained that maybe his counselor had not been able to discuss the situation with his supervisor yet. At any rate, I did tell him I would talk to his counselor and ask him to call him today, and if he could not, I would try to call and update him on his request. He said he wanted a phone call, not an email. LM

Assign this as a task to: []

Contact Note: 12/08/2015 04:18:54 PM - Client Contact (David Stebbins, XXX-XX-414) Page 1 of 1

Client Contact Note

Client Name: David Stebbins

Date: 12/08/2015

Description: Client Contact

Whose Note:

For Program: VR

Status: 02

Type of Contact: Phone

Flag this Contact Note?

Note:

aa McGehee Received call from client around 2:20 p.m. on 12/08/2015 and he was very rude and yelling. He was insisting to talk to Kevin Cook and I tried to explain Kevin was not in the office. He would get quite and start whispering like he had someone else to talk to but it sounded very strange as he was doing the whispering. I ask him to please calm down so I could explain and he would not stop so I told him to hold please so I could possibly get him help and he was still screaming as I put him on hold and I transferred the call to Caterina at this point because he did not want to listen to me at all.

Assign this as a task to: | |

Exh. 2

Contact Note: 12/08/2015 04:21:38 PM - Client Contact (David Stebbins, XXX-XX-414,.... Page: 1 of 1

Client Contact Note

Client Name: David Stebbins

Date: 12/08/2015

Description: Client Contact

Whose Note: CATERINA MATHENY

For Program: VR

Status: 02

Type of Contact: Phone

Flag this Contact Note?

Note:

David call looking for his Counselor Kevin Cook, and ask regarding information did we receive the medical records. I told him we have not received records. He ask who didn't send the information and I told who didn't send yet and he would try to find out why at 2:20pm, then call back at 3:20pm in a high voice yelling and would not calm down, client state that he call Crossroads Medical Clinic and was hand up on him, tried again his call wouldn't go through, I had to forward the call to Alana Walls to help with the client. ccm

Assign this as a task to: | |

Exh. 23

Contact Note: 12/08/2015 04:39:04 PM - Case Note (David Stebbins, XXX-XX-4148)... Page 1 of 1

Client Contact Note

Client Name: David Stebbins

Date: 12/08/2015

Description: Case Note

Whose Note: ALANA WALLS

For Program: VR

Status: 02

Type of Contact: Phone

Flag this Contact Note?

Note:

CRC was transferred a phone call around 3:25 from Mr. Stebbins. Mr. Stebbins sounded short of breath and emotionally upset as was noticeable from his rapid speech and volume. Mr. Stebbins was questioning why Mr. Cook has not made any progress in his case and what else he needed to provide the agency to send him to a doctor for a diagnosis. CRC explained to him the need for a documented disability from a doctor in order to be determined eligible. Mr. Stebbins' verbal behavior and temper continued to escalate and CRC told him that she did not have to listen to his abusive language and that if he would calm down an attempt would be made to explain our eligibility policy. He continued to ask the same questions regarding why the information he had already supplied was not enough. He began to yell and CRC told him that she was not going to continue the conversation, wished him a good afternoon and hung up. A call was made to Amy Jones, District Manager, advising her of the telephone encounter.

Assign this as a task to: |

Exh. 34

Contact Note: 12/08/2015 05:17:17 PM - case update- contact with client (David Stebbins) (Sy... Page 1 of 2

Client Contact Note

Client Name: David Stebbins
Date: 12/08/2015
Description: case update- contact with client

Whose Note: AMY JONES CRC

For Program:
Status:

Type of
Contact:

Flag this Contact Note?

Note:

I received a message from Anita on 12/4 to contact David. Anita stated that David was screaming at her on the phone and very angry that he got my voicemail. Anita then asked Lorraine Miller to take David's call. Lorraine expressed her concern about David's conversation and she documented her conversation in the ECF. I tried to return David's call and there was no answer.

I received a call today from Alana Walls that David called the Harrison office and she was very concerned about the safety of the staff because of David's behavior on the phone and she wanted to call the police.

I called David and spoke to him today regarding his case and his behavior to the staff.

David was yelling, angry and breathing very heavy and rapid. I tried to calm him down and expressed my concern for his well being. David is angry because he had not received a call back from Kevin. I explained that I was unable to contact David, so it was possible that Kevin was also unable to. I also explained our services and the process for collecting medical records, 60 days to determine eligibility and assessments necessary to develop the IPE. David's application was 12/1 and ROI's have been sent. I asked David how he was referred to ARS and he stated that Disability Rights referred him to us because they could not help him sue the Government. David stated that the government is harassing him and that is partially why he is so angry with our agency- because we are a government agency.

Exh. 5

Contact Note: 12/08/2015 05:17:17 PM - case update- contact with client (David St... (Sy... Page 2 of 2

David wants to go to college and is requesting that our agency pay to move him, pay for housing and pay full tuition and fees. I explained our process for eligibility and plan development again. I asked David about college experience. He stated to Kevin that he has \$40,000 in student loans but only a couple of credits. David stated that he was thrown out of the U of A in Fayetteville in the Fall of 20007 for making threats. I asked what threats he made and he stated he doesn't know it's a 20 page report. David stated he then went to NAC and teachers provided him accommodations by pulling him aside to explain his behavior was abusive rather than calling it out in class. However, David was unable to complete most of his semesters.

David stated that he was discharged from St. Bernard's last April and has not received any treatment or care since then. I asked about discharge report and recommendations and David said he was told to go somewhere and went one time but that was it.

I expressed my concern for David's well being and mental stability based on the conversation we were having. Throughout the conversation David maintain his escalated voice and rapid breathing and extreme agitation. I asked about family and friends or any support system that I could contact regarding my concern and David stated he hated his f***ing family and that was a 2 hour story. I stated that I didn't want the 2 hour story, I just wanted to see if anyone was available to help him. David stated that if he called me a fucking bitch fagot he would understand why I would be offended or feel threatened. But if he is just expressing his anger that I should understand. He can't control his anger especially when he can't get any answers. I explained our system and answered all his questions. I stated that I would speak to Kevin and to our psych examiner and would try to call him back tomorrow.

I spoke to Leslie about the case and she did not think he needed to be scheduled in any office at this time due to his instability.

I called Carl to explain the situation and he stated that we needed to contact the police to let them know of the harassing calls and threatening behavior. He stated that we needed to call a psychiatric facility for mandated reporting regarding our concern for his well being. I also informed the Harrison Office staff to keep doors from lobby to office area locked at all times. If David comes to the office they need to notify the police immediately. If David calls the office he is to be directed only to me from now on. I will follow-up tomorrow with this situation. I will inform the Fayetteville Office first thing in the morning as the office is currently closed. AJ

Assign this as a task to:

DEC-09-2015 10:29 From:HPD DISPATCH

970 741 1570

To:14795921762

P.1/2

Harrison Police Department

Dispatch Call Detail

Call #: C231014 - REQUEST TO SPEAK WITH AN OFFICER

Received Date/Time: 12/09/2015 09:33:30

Taken By: Hanlin, Katherine

Cleared Date/Time: 12/09/2015 09:58:28

Caller Name: DAUGHTERY, CARL

Cleared By: Hanlin, Katherine

Phone: (501) 944 - 5782

Caller Loc.:

Location: 715 W Sherman E

Units Dispatched

	Dispatched	Enroute	Arrived	Transport	Trans Dest	Cleared	Message
103 - Waldon, Justin (HPD)	12/09/2015 09:58:20					12/09/2015 09:58:22	

Narrative

Date/Time	Dispatcher	Narrative
12/09/2015 09:33	Hanlin, Katherine	CARL DAUGHTERY WITH ARKANSAS REHABILITATION SERVICES CONTACTED THE HPD REQUESTING TO SPEAK WITH AN OFFICER IN REFERENCE TO DAVID STEBBINS WHO HAS MADE PREVIOUS THREATS TO SEVERAL LOCATIONS INCLUDING THE UNIVERSITY OF ARKANSAS. DAUGHTERY STATED WHEN THEY SPEAK WITH STEBBINS, HE BECOMES EXTREMELY HOSTILE AND REFUSES TO CALM DOWN. //SGT WALDON SPOKE WITH DAUGHTERY WHO ONLY REQUESTED THE INFORMATION BE NOTED. NO REPORT.

Dispositions

No Report Required

Incidents

Association

DEC-09-2015 10:29 From:HPD DISPATCH

870 741 1678

To:14795821762

P.2/2

Harrison Police Department

Dispatch Call Detail

Call #: C230993 - REQUEST TO SPEAK WITH AN OFFICER

Received Date/Time: 12/08/2015 16:57:55

Taken By: Lane, Melissa

Cleared Date/Time: 12/08/2015 17:06:46

Caller Name: WALLS, ALANA

Cleared By: Lane, Melissa

Phone: (870) 204 - 0778

Caller Loc.:

Location: 116 S Spring

Units Dispatched

	Dispatched	Enroute	Arrived	Transport	Trans Dest	Cleared	Mileage
117 - Babb, Jonathan (HPD)	12/08/2015 16:59:59	12/08/2015 17:00:01	12/08/2015 17:00:01			12/08/2015 17:06:42	

Narrative

Date/Time	Dispatcher	Narrative
12/08/2015 16:58	Lane, Melissa	ALANA WALLS WITH THE DEPARTMENT OF CAREER EDUCATION ARKANSAS REHAB CONTACTED THE HPD TO MAKE A REPORT. // PTL BABB ADVISED WALLS OF HER OPTIONS. OFFICER ADVISED WALLS STATED A DAVID STEBBINS HAD CALLED AND WAS RUDE OVER THE PHONE. NO REPORT.

Dispositions

No Report Required, Advised of rights.

Incidents

Association

Exh. 7